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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

11 Jeremy Pinson,
12 Plaintiff,
13 v.
14 Federal Bureau of Prisons, et al.,
15 Defendants.

16 No. CV-19-00235-TUC-RM
17 **ORDER**

18 Pending before the Court is Defendants' Motion to Compel Appropriate Discovery
19 Responses (Doc. 107), to which Plaintiff responded (Doc. 112) and Defendants replied
20 (Doc. 116). Also pending is Plaintiff's Motion for Leave to File Reply to Response to
21 Supplemental Declaration. (Doc. 113). Defendants did not respond to the Motion for
22 Leave and the time for doing so has expired. LRCiv 7.2(c).

23 **I. Defendants' Motion to Compel**

24 In an Order dated October 22, 2021, the Court granted Defendants leave to file a
25 Motion to Compel, finding that they had sufficiently complied with the Court's
discovery-dispute procedures up to that point. (Doc. 100 at 9-10.)

26 In their Motion to Compel, Defendants aver that they sent Plaintiff first sets of
27 Requests for Production ("RFPs"), Requests for Admission ("RFAs"), and Interrogatories
28 on May 21, 2021. (Doc. 107 at 2.) Plaintiff produced 129 pages of documents in response

1 to the first set of RFPs, as well as objections. (*Id.*) Plaintiff and defense counsel thereafter
2 exchanged numerous letters regarding Plaintiff's RFP responses. (*Id.* at 3-4.) Plaintiff and
3 defense counsel also exchanged letters regarding Plaintiff's responses to Defendants'
4 Interrogatories. (*Id.* at 4-5.) Defendants aver that the following matters remain
5 outstanding following the parties' personal consultations:

- 6 (1) Whether any of the documents originally produced by Plaintiff are responsive
7 to any of the requests;
- 8 (2) If so, identification of the requests to which the documents are responsive;
- 9 (3) Whether Plaintiff has produced any documents responsive to RFPs 1, 2, or 3;
- 10 (4) Whether Plaintiff is withholding any responsive documents; and
- 11 (5) A responsive answer to Interrogatory 1.

12 (*Id.* at 5.)

13 Defendants aver that Plaintiff has produced only two pages that appear to be
14 responsive to their RFPs and that she has failed to identify which documents that have
15 been produced are responsive and which are non-responsive. (*Id.* at 7-9.) Defendants
16 further aver that Plaintiff has not identified whether she is withholding any responsive
17 documents. (*Id.* at 9-10.) In addition, Defendants aver that Plaintiff has not substantively
18 responded to Interrogatory 1, which requested an explanation of Plaintiff's response to
19 RFA 1, which in turn requested that Plaintiff admit or deny that she did not submit a BP-
20 10 or BP-11 for gender reassignment surgery while at United States Prison ("USP")-
21 Tucson after December 2018. (*Id.* at 10-11.) Defendants further aver that Plaintiff has
22 raised numerous issues and objections and then later abandoned them, leading to a waste
23 of Defendants' counsel's and the Court's time. (*Id.* at 12.) Defendants ask the Court to
24 enter an order compelling Plaintiff to provide appropriate discovery responses or either
25 dismiss her case or preclude her from introducing any evidence that she has failed to
26 provide in a timely fashion. (*Id.* at 12.)

27 In response, Plaintiff avers that she is not withholding any documents or
28 information, and she states that, after receiving Defendants' September 30, 2021 letter,

1 she sent a responsive letter that resolved the issues raised in Defendants' Motion to
2 Compel. (Doc. 112.) Plaintiff does not attach a copy of the letter she sent to Defendants,
3 nor does she explain how the letter addresses the issues raised in Defendants' Motion to
4 Compel. (*See id.*)

5 In reply, Defendants state that the letter which Plaintiff references in her Response
6 was postmarked after the filing of Defendants' Motion to Compel. (Doc. 116 at 2.) The
7 letter is attached to the Reply. (Doc. 116-1.) The letter identifies 9 of the 127 pages
8 produced in response to Defendants' RFPs as responsive to those requests and further
9 references multiple medical notes and an "Administrative Remedy Generalized
10 Retrieval" which Plaintiff has not produced. (*Id.*; Doc. 116 at 3.) Plaintiff also clarifies
11 her responses to Interrogatory 1 and RFA 1; avers that she located no BP-10 or BP-11
12 dated after December 2018 requesting gender reassignment surgery; and again avers that
13 she is not withholding any documents. (*Id.*)

14 A party may serve on any other party a request for production that is within the
15 scope of Rule 26(b). Fed. R. Civ. P. 34(a). The responding party "has a duty to undertake
16 a diligent search and reasonable inquiry in order to adequately respond to requests for
17 production." *Burnett v. United States*, No. EDCV-15-1707-CAS(KKx), 2016 WL
18 3392263, at *6 (C.D. Cal. June 14, 2016). The party seeking to compel discovery bears
19 the burden of establishing that its requests satisfy relevancy requirements, and the party
20 opposing discovery bears the burden of supporting its objections and showing why
21 discovery should not be allowed. *La. Pac. Corp. v. Money Market 1 Inst. Inv. Dealer*, 285
22 F.R.D. 481, 485 (N.D. Cal. 2012).

23 Plaintiff's letter responds to the contentions set forth in Defendants' Motion to
24 Compel, without reiterating any objections to Defendants' discovery requests.
25 Accordingly, the Court finds that Plaintiff has abandoned any previously raised
26 objections. The Court further finds that the clarifications provided by Plaintiff in the letter
27 are responsive to Defendants' concerns such that compelling Plaintiff to produce further
28 documentation is unnecessary. It appears that Plaintiff has responded to Defendants'

1 discovery requests to the best of her ability based upon the documents in her possession.
2 Accordingly, Defendants' Motion will be denied insofar as it seeks to compel Plaintiff to
3 produce further documentation. The Motion, however, will be granted insofar as Plaintiff
4 will not be allowed to rely on any documentation that is not produced before the
5 discovery period closes. This prohibition applies to any documents for which Plaintiff
6 does not provide a Bates number or record citation. Plaintiff's references to documents
7 that have not been produced in this litigation—including but not limited to medical
8 records in other cases, documents that she avers are already in the possession of the
9 Bureau of Prisons, or documents that she claims exist but has not produced—are not
10 adequate to satisfy discovery requirements.

11 **II. Plaintiff's Motion for Leave to File Reply to Supplemental Disclosure**

12 In an Order filed on September 7, 2021, the Court addressed various discovery
13 issues and ordered Defendants, in part, to file a Notice updating the Court on the status of
14 Plaintiff's allegedly lost documents. (Doc. 86 at 11, 13.) The Court further ordered
15 Defendant to provide Plaintiff with copies of all Court Orders and discovery produced to
16 date in the above-captioned case if the lost documents had not been returned to Plaintiff.
17 (*Id.*)

18 Defendants thereafter filed a supplemental Notice averring that Defendants could
19 not determine which documents were lost and accordingly could not arrange for the
20 return of any purportedly lost documents and, therefore, that they had sent Plaintiff
21 copies of all Court Orders and discovery produced to date in this case. (Doc. 88 at 2-3.)
22 Plaintiff responded, averring that she had not received all Court Orders and discovery
23 produced to date in this case. (Doc. 93 at 2.) Based on Defendants' averment that they
24 had sent Plaintiff all Court Orders and discovery produced to date, the Court declined to
25 order any further relief regarding Plaintiff's purportedly lost documents. (Doc. 100 at 3.)
26 However, the Court allowed Plaintiff an opportunity to file a further declaration signed
27 under penalty of perjury if she still had not received copies of the Court Orders and
28 discovery. (*Id.* at 3-4.)

1 On November 1, 2021, Plaintiff filed a Supplemental Declaration averring that she
2 still had not received copies of all Court Orders and discovery produced to date in this
3 case. (Doc. 106.) Defendants filed a Response, again averring that they had sent Plaintiff
4 copies of all Court Orders and discovery. (Doc. 109.)

5 Plaintiff seeks leave to file a Reply to Defendants' Response to her Supplemental
6 Declaration. (Doc. 113.) In the Reply, Plaintiff responds to Defendants' attack on the
7 credibility of her November 1, 2021 Supplemental Declaration. (*Id.*) She also avers that,
8 on November 9, 2021, her Unit Manager Anissa Jackson informed her that she was in
9 possession of voluminous documents that defense counsel mailed on September 14, 2021
10 and September 16, 2021. (Doc. 113-1 at 1.) Ms. Jackson offered to arrange an
11 appointment for Plaintiff to view the documents. (*Id.*) Plaintiff further avers that at no
12 time prior to November 9, 2021 was she aware that Ms. Jackson had possession of the
13 documents. (*Id.*)

14 The Court will grant Plaintiff leave to file her Reply to Defendants' Response to
15 her Supplemental Declaration. Based on the declaration attached to the Motion for Leave
16 to File Reply, it appears that Plaintiff is now able to view the copies of Court Orders and
17 discovery mailed by defense counsel on September 14, 2021 and September 16, 2021.
18 Accordingly, the Court considers the issue concerning Plaintiff's lost documents to be
19 resolved.

20 Accordingly,

21 **IT IS ORDERED** that Defendants' Motion to Compel Appropriate Discovery
22 Responses (Doc. 107) is **granted in part and denied in part** as follows:

23 (1) The Motion is **denied** insofar as it seeks to compel Plaintiff to produce
24 additional documentation or discovery responses.

25 (2) The Motion is **granted** insofar as it seeks to prohibit Plaintiff from relying on
26 any documents not produced before the close of discovery. Plaintiff may not
27 rely on any documents that are not produced and identified by record citation
28 or Bates number in this case before the close of discovery.

1 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to File Reply to
2 Supplemental Disclosure (Doc. 113) is **granted**.

3 Dated this 27th day of December, 2021.

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Honorable Rosemary Márquez
United States District Judge